

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

PURDUE PHARMA L.P. et al.,

Plaintiffs,

v.

COLLEGIUM PHARMACEUTICAL, INC.,

Defendant.

C.A. No. 15-cv-13099-FDS
(Lead Docket No.)

JOINT STATEMENT PURSUANT TO L.R. 16.1 AND FED. R. CIV. P. 26(f)

Pursuant to Local Rule 16.1(d) and Rules 16(b)-(c) and 26(f) of the Federal Rules of Civil Procedure, Plaintiffs Purdue Pharma L.P., The P.F. Laboratories, Inc., Purdue Pharmaceuticals L.P., and Rhodes Technologies (“Plaintiffs”) and Defendant Collegium Pharmaceutical, Inc. (“Defendant”) submit this joint statement in connection with the above-captioned litigation following conference of counsel in which the topics of those rules were discussed.

I. PRETRIAL SCHEDULE

The parties’ proposed Scheduling Order appears in Appendix A. For convenience, a summary table (including deadlines already met) follows:

Event	Date
Rule 26(f) conference	April 6, 2016 (completed)
Plaintiffs present written settlement proposal to Defendant.	April 11, 2016 (completed)
Joint statement per Rules 16(b)-(c), 26(f) and L.R. 16.1, 16.6	April 18, 2016 (completed with present filing)
Rule 16 scheduling conference	April 25, 2016
Exchange of initial disclosures	May 9, 2016

Event	Date
Defendant shall produce its NDA	May 23, 2016
Plaintiffs' preliminary infringement contentions and accompanying production	June 22, 2016
Defendant's preliminary invalidity and non-infringement contentions and accompanying production	August 19, 2016
Amended pleadings / joinder of parties	September 23, 2016
Substantial completion of document production	September 28, 2016
Identification of claim terms to be construed	October 19, 2016
Proposed claim constructions and supporting evidence	November 2, 2016
Opening claim-construction briefs	November 18, 2016
Completion of discovery regarding claim construction	December 22, 2016
Responsive claim-construction briefs	January 19, 2017
Joint claim-construction and pre-hearing statement	February 2, 2017
Close of fact discovery	January 25, 2017
Claim-construction hearing	To be established by the Court (the parties propose within 14 days of the filing of the joint claim-construction statement or as soon thereafter as the Court's schedule permits)
Claim-construction decision	To be established by the Court (the parties propose by March 31, 2017, or as soon thereafter as the Court's schedule permits)
Plaintiffs' final infringement contentions	April 26, 2017
Defendant's final invalidity and non-infringement contentions	May 24, 2017
Opening expert reports	June 21, 2017
Rebuttal expert reports	July 19, 2017
Reply expert reports	August 10, 2017
Close of expert discovery	September 20, 2017

Event	Date
Final Pretrial Conference	November 30, 2017 (or as soon thereafter as the Court's schedule permits)

II. NATURE AND BASIS FOR THE CLAIMS AND DEFENSES

Plaintiffs have asserted allegations of patent infringement. Defendant has asserted allegations of patent non-infringement and invalidity.

III. SETTLEMENT POSSIBILITIES

Plaintiffs have presented to Defendant a written settlement proposal. Defendant has responded to Plaintiffs' proposal. Despite substantive and good-faith settlement discussions, the parties were unable to reach a settlement.

IV. WHETHER PARTIES CONSENT TO TRIAL BY A MAGISTRATE JUDGE

The parties do not consent to trial by a magistrate judge.

V. EXCHANGE OF INITIAL DISCLOSURES PURSUANT TO RULE 26(A)(1)

The parties agree to exchange initial disclosures pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure by May 9, 2016.

VI. PROPOSALS REGARDING PATENT MATTERS PER L.R. 16.6(A)

A. Preliminary infringement and invalidity positions (L.R. 16.6(A)(1))

The proposed Scheduling Order (Appendix A) sets forth the schedule and procedures for the exchange of Plaintiffs' preliminary infringement contentions and Defendant's preliminary invalidity and non-infringement contentions.

B. Claim construction (L.R. 16.6(A)(2)-(4))

The proposed Scheduling Order (Appendix A) sets forth the schedule and procedures for claim construction.

At this time, the parties propose that the claim-construction hearing be conducted based

on the parties' opening and responsive briefs, including any accompanying expert declarations, oral presentation by the parties' attorneys (including a possible tutorial and argument), and possible live testimony by those who have submitted declarations during briefing. The parties may revisit these proposals in their joint claim-construction and prehearing statement, to be filed with the Court prior to the claim-construction hearing in accordance to the proposed schedule in Appendix A.

As detailed in Appendix A, the parties propose that claim-construction exchanges and filings occur near the completion of fact discovery, with the claim-construction hearing occurring after completion of fact discovery. The parties further propose that expert discovery commence after the issuance of the claim-construction order. The parties believe that commencing expert discovery after the completion of claim construction will best preserve resources by avoiding the necessity for experts to opine on multiple constructions or revise their reports after the claim constructions are issued by the Court.

C. Whether there exist dispositive issues that may lead to an early resolution of the litigation (L.R. 16.6(A)(5))

Defendant plans to re-file its motion of invalidity of U.S. Patent No. 9,073,933 on the basis of collateral estoppel in the form of a summary judgment motion. Defendant believes that this motion will dispose of all outstanding claims related to that patent. In addition, Defendant plans to file an early summary judgment motion for non-infringement of U.S. Patent No. 8,652,497. Resolution of both of those motions is expected to lead to early resolution of the litigation in its entirety.

Plaintiffs disagree that Defendant's proposed motions will lead to an early or any resolution of the litigation. With respect to Defendant's proposed motion on the '933 patent, Defendant has already brought and withdrawn that motion. (D.I. 14, 54.) While Plaintiffs do not

know how, if at all, Defendant's re-filed motion will differ, collateral estoppel is inapplicable here, at least for the reasons explained in Plaintiffs' opposition (D.I. 18) to the first motion. As to the '497 patent, Plaintiffs also do not yet know the bases for Defendant's noninfringement arguments. Plaintiffs are confident in their infringement case based on the documents Plaintiffs have seen so far from Defendant's ANDA. Moreover, it is well settled that infringement is a two-step process: "The first step is determining the meaning and scope of the patent claims asserted to be infringed. The second step is comparing the properly construed claims to the device accused of infringing." *Markman v. Westview Instr., Inc.*, 52 F.3d 967, 976 (Fed. Cir. 1995) (citation omitted). Both steps require discovery, making "early" resolution for the '497 patent impossible.

D. Authorization of documents under seal (L.R. 16.6(A)(6))

The parties will separately submit a proposed Protective Order Governing Confidential Information and Material providing that all documents containing confidential information shall be filed with the Court under seal in accordance with the Court's Local Rules and CM/ECF procedures.

E. Procedures for and limits on the discovery of ESI (L.R. 16.6(A)(7))

Procedures for and limits on the discovery of electronically stored information (ESI) will be provided in the parties' Stipulation and Order as to Conduct of Discovery, to be filed separately. Proposed deadlines for discovery are provided in Appendix A hereto.

VII. PROPOSALS REGARDING DISCOVERY

The proposed Scheduling Order (Appendix A) and the separately filed Stipulation and Order as to Conduct of Discovery sets forth the parties' agreement regarding the conduct of discovery in this action.

VIII. CERTIFICATION REQUIRED BY L.R. 16.1(D)(3)

The certifications required by L.R. 16.1(d)(3) are attached as Appendices B-C.

Dated: April 18, 2016

/s/ Christopher M. Morrison

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CERTIFICATE OF SERVICE

I, Christopher M. Morrison, hereby certify that a true copy of the foregoing document filed through the ECF system will be electronically sent to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on April 18, 2016.

/s/ Christopher M. Morrison
Christopher M. Morrison